

McLean Hospital Corporation and International Union of Operating Engineers, Local 877, AFL-CIO, Petitioner. Case 31-RC-19749

November 27, 1992

ORDER DENYING REVIEW

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Employer's request for review of the Regional Director's Decision and Direction of Election (the relevant portions of which are attached), as well as the Petitioner's opposition brief.

The request for review is denied, as it raises no substantial issues warranting review.¹

¹ The request for review asserts that the Regional Director erred in finding that the petitioned-for skilled maintenance unit is an appropriate unit for bargaining at the psychiatric hospital operated by the Employer. To avoid any perceived confusion and to reaffirm our prior decisions, we emphasize, in denying review of the Regional Director's unit finding, that the Regional Director correctly applied the principles of *Park Manor Care Center*, 305 NLRB 872 (1991), which set forth general principles applicable to unit determinations for all health care facilities, including nonacute care psychiatric hospitals, which are not covered by the Board's Final Rule on Collective-Bargaining Units in the Health Care Industry, 284 NLRB 1580 (1989). See *Lifeline Mobile Medics*, 308 NLRB 1068 (1992); *Child's Hospital*, 307 NLRB 90, 92 fn. 16 (1992).

In view of the Board's denial of the Employer's request for review, it is unnecessary to rule on the Petitioner's motion to reopen the record. Also, in denying review the Board does not pass on the Regional Director's discussion of the regional determination in *Brattleboro Retreat*, Case 1-RC-19742 (Mar. 26, 1992), in which a request for review presently is pending before the Board.

APPENDIX

The Employer is a private, nonprofit health care institution engaged in the treatment of psychiatric patients at its Belmont, Massachusetts facility. The Petitioner seeks to represent employees in a bargaining unit limited to the skilled maintenance employees in the Employer's plant and operations department, including employees in the following classifications: apprentice carpenter, apprentice electrician, apprentice mason-plasterer, apprentice mechanic, apprentice plumber, carpenter A, carpenter B, electrician A, electrician B, fireman first class, fireman second class, HVAC mechanic, labor supervisor, laborer A, laborer B, mason A, mason B, mechanic A, mechanic B, oil burner technician, painter, pipe fitter, plumber A, plumber B, roofer, vehicle equipment mechanic A, and vehicle & equipment mechanic B. The Employer contends that the only appropriate unit is a unit consisting of all of its nonprofessional employees, approximately 150 classifications of maintenance, service, clerical, and technical employees, excluding human resource department employees, information systems employees, security guards, and confidential, managerial, and supervisory employees.

Should the Regional Director find that the employees of the plant and operations department constitute an appropriate unit, the Employer would also include in that unit the titles of drafter, staff secretary, department secretary, and office assistant; the Petitioner would exclude those employees from a plant and operations unit. With regard to the Employer's proposed unit of all nonprofessionals, the parties also disagree on the supervisory status of the title of gift processing supervisor and on whether or not the pharmacy interns should be excluded as students. There are approximately 67 employees in the unit sought by the Petitioner, and approximately 850 employees in the unit sought by the Employer. There is no history of collective bargaining among any of the employer's nonprofessional employees.

Unit Scope: Skilled Maintenance vs. Nonprofessional

McLean Hospital is a nationally recognized psychiatric hospital and a major teaching hospital of the Harvard University Medical School. It is a subsidiary of Massachusetts General Hospital, a well-known general acute care hospital in Boston, Massachusetts. In addition to having clinical and teaching missions, McLean also serves as a research facility in the area of mental illness.

McLean is licensed by the Commonwealth of Massachusetts Departments of Mental Health and Public Health and accredited by the Joint Commission for Accreditation of Health Care Organizations as a psychiatric facility. On its 240-acre campus in Belmont, Massachusetts, McLean provides inpatient, outpatient, partial hospitalization, and community residential services to severely mentally ill patients. It has 14 inpatient units with 273 inpatient beds and 13 community residences with 134 beds. Eight of the community residence programs are located on the Belmont campus; five are located in nearby communities. Also located on the Belmont campus are various research laboratories and the Arlington School, a high school for severely disturbed adolescents.

McLean Hospital employs approximately 2000 professional and nonprofessional employees who are currently unrepresented and is headed by Dr. Steven Mirin, general director and psychiatrist in chief. Five associate general directors report to Dr. Mirin and oversee some 51 departments. Harold Shea, director of support services, oversees the plant and operations, building services, dietary, environmental health and safety, and security departments, and reports to Michele Gougeon, associate general director for hospital operations. James Langill, director of the plant and operations department, reports to Harold Shea and is assisted by Arthur Heinstrom, project manager, and Milton Courtemanche, maintenance manager.

The plant and operations department is responsible for maintaining the Hospital's grounds and buildings, of which there are 42 on the Belmont campus. The department consists of some eight "shops," each devoted to a different trade. The employees in each shop report to a foreman, or in the case of the powerhouse, to the powerhouse engineer, who, in turn, reports to Langill. Langill, Heinstrom, Courtemanche, the seven foremen, and the powerhouse engineer have been stipulated by the parties to be supervisors within the meaning of the Act.

Five of the shops—the carpentry shop, the electric shop, the mechanic shop, the paint shop, and the pipe shop—are

located together in a complex of maintenance shops in the middle of the campus. In a separate building about 100 yards away is the powerhouse. At one end of the campus, approximately a quarter of a mile away from the other maintenance shops, is the mason shop. Near the mason shop is the garage, which houses the public works shop laborers and vehicle mechanics.

The carpentry shop has a foreman and 11 carpenter A's who are responsible for repairing and maintaining the buildings' wooden structures. In addition, one carpenter A works primarily as a locksmith and another primarily builds and repairs wooden furniture. Carpenter A's are required to have a high school or trade school education, must have gone through a 4-year apprenticeship or its equivalent, and must have 2 years of experience. The foreman and five of the carpenter A's have a construction supervisor's license from the state which now is obtained after passing an exam and which allows them to pull construction permits. Such a license is not required for the job, but is listed as a plus on the job description. Carpenters work from blueprints and must follow the state building code. They work with power tools such as table saws, band saws, jig saws, drills, drill presses, and screw guns. They use safety glasses, respirators, and gloves, and they use ladders and staging when working at heights. Recently 50 plant and operations employees from all trades attended a demonstration held at the carpentry shop on how to use a new harness when working at heights.

The electric shop has a foreman, 7 electrician A's, 1 part-time electrician B and 2 apprentice electricians. The electricians install, repair, and maintain the hospital's electrical systems, utilities, and emergency power system, as well as perform safety checks on patients' and employees' electrical appliances. Electrician A's must be high school or trade school graduates, have a Massachusetts journeyman electrician's license, go through a 4-year apprenticeship or its equivalent, and have 2 years of experience. In order to be licensed, an electrician must pass an exam and have 6000 hours of experience as an electrician's helper. The license must be renewed every 2 or 3 years and electricians must take a 3-week course which updates them on the National Electric Code as a condition of license renewal. Special rules of the National Electric Code apply to medical-surgical hospitals and to McLean buildings that house inpatient units. The electrician B position requires fewer years of experience than the A, requires more supervision, and does not require a license. The electricians work from blueprints. They use power tools such as hammer drills, sawsalls, and voltage testers, and work at heights. Some of the electricians at McLean have received minor shocks and sustained falls from ladders.

Two years ago McLean began to offer an electrician's apprentice program and several of the laborers from the public works shop took turns working in the electric shop for a one-to 2-month trial period to see if they might like to become an apprentice. The 2 current apprentice electricians are former laborers who transferred from the public works shop pursuant to that program. The apprenticeship is a 4-year, state-sanctioned program which culminates in the exam for a journeyman's license.

The mechanic shop employs a foreman, three HVAC mechanics, three mechanic A's, and six mechanic B's. The HVAC mechanics install, maintain, and repair the Hospital's refrigeration, heating, ventilation, and air conditioning sys-

tems. The position requires a Massachusetts refrigeration license, which is obtained by passing an exam, a high school or trade school diploma, 4 years of apprenticeship or its equivalent, and 2 years of experience. Mechanic A's perform mechanical repairs such as repairing fans, washers and dryers, motors, and other mechanical equipment, and may assist the HVAC mechanic in the installation of air-conditioning units. They also inspect the fire extinguishers monthly and replace light bulbs. Mechanic A's are required to have a high school or trade school diploma, a 4-year apprenticeship or its equivalent, and 2 years of experience. No license is required. A mechanic B must be a high school or trade school graduate, have mechanical aptitude, and have 2 years of experience. Mechanics use hand tools and power tools such as jackhammers and electrical handcutters. They are issued safety goggles for use with torches and welders and face shields for use with the drill press. They work on tall ladders as high as 24 feet.

Eight plumber A's, an oil burner technician, and a foreman work in the pipe shop. Plumber A's are responsible for installing, repairing, and maintaining the hospital's drinking and hot water heating systems, sewerage system, and acid waste system and must perform their work in compliance with a complex state plumbing and gas fitting code. The position requires a high school or trade school diploma, a Massachusetts journeyman plumber's license, 4 years of apprenticeship or on-the-job training, and 2 years of experience. Some of the current plumber A's went through a 4-year, state-sanctioned apprenticeship at McLean's, which required 150 hours of classroom instruction per year and 2000 hours of supervised work per year. Apprentices must register with the State's Division of Registration in Plumbing and take an exam to obtain their journeyman plumber's license. Plumbers work with power tools such as drills, saws, and jackhammers, and use torches and high ladders. They may be exposed to hot steam burns and asbestos, as well as chemicals and radiation in the hospital labs. They are issued hardhats, safety glasses, welding gloves, and a welding cape.

The oil burner technician is responsible for installing, maintaining, and repairing some 25 oil and gas-fired burners on and off campus. The qualifications for the job include a Massachusetts oil burner technician's license, 2 years of technical school, a 4-year apprenticeship or on-the-job training, and 2 years of experience.

A foreman and nine painter A's work in the paint shop doing primarily interior and exterior surface preparation and painting. Painter A's also do wallpapering and install glass. Two painter A's spend most of their time in the shop making signs and window shades and stripping furniture. Painter A's must have a high school or technical school diploma, complete a 3-year apprenticeship or its equivalent, and have 2 years of experience in the trade. No license is required. Painters work at heights up to 45 feet and are issued safety goggles and respirators.

The mason shop employs a foreman, four masons, and two laborer A's. Masons perform interior and exterior brick-laying, plastering, tiling, and cement-finishing work at the hospital and must be able to work off architectural drawings. Masons must have a high school or trade school diploma, a 4-year apprenticeship or on-the-job training, and 2 years of experience in the trade. No license is required. Laborer A's assist the masons by preparing plaster and mortar and setting

up staging. A high school diploma and 4 years of experience are required for the job. Employees in the masons shop work on staging and use respirators.

The fireman first class, who works in the powerhouse under the supervision of the engineer, operates, maintains, and repairs the boilers which supply heat and hot water to hospital buildings as well as the Hospital's emergency diesel generator system. He also maintains and repairs the Hospital's incinerator system which is located in the powerhouse but operated by an incinerator operator from the building services department. Individuals in this trade take a 6-month course at a school of steam engineering and pass an exam given by the state Department of Public Safety in order to obtain a second fireman's license. This entitles them to operate a boiler under the supervision of a more experienced fireman. After six more months of study and an oral and written exam they progress to a first fireman's license which entitles them to operate boilers under a certain level of pressure. Engineers have a yet higher level license. A fireman's license must be renewed every 2 years. The fireman first class at McLean must have a first class fireman's license, a high school or technical school diploma, a 4-year apprenticeship or on-the job training, and 2 years of experience in the trade. He is required to work at heights and may be exposed to hot steam and noise. He is issued a hardhat, safety glasses, gloves, respirator, and ear protection.

Two vehicle and equipment mechanics, one A and one B, work in the garage under the supervision of the public works shop foreman. They are responsible for maintaining, repairing, and fueling the Hospital's fleet of 48 vehicles, plus motorized equipment such as lawn mowers and chainsaws. The mechanic B also spends about 50 percent of his time doing groundskeeping work. The mechanic A must have a high school diploma and some coursework in auto mechanics. The current mechanic A had extensive training and experience in auto mechanics and owned a garage prior to coming to McLean. No license is required beyond a class 2 driver's license, which permits the mechanic to drive certain heavy vehicles such as a snowplow, sander, or dumptruck. The mechanic B must have a high school diploma, experience in related work, and an aptitude for auto mechanics. Vehicle mechanics use hand tools, electric tools, air-powered tools, computerized diagnostic equipment, battery testers, wire testers, and welding equipment for small welding jobs. The vehicle mechanics use safety goggles and work boots with neoprene soles and work with mechanical equipment such as tire machines and hydraulic lifts which may present a safety concern.

A labor supervisor (stipulated to be a nonsupervisory employee within the meaning of the Act) and six laborer A's work out of the public works shop in the garage under the supervision of the public works foreman. Laborers do landscaping and groundskeeping work such as planting flowers and shrubs, raking, mowing grass, and pruning trees. They also pave sidewalks, remove snow, sand the roads in winter, and do demolition work. The job requires a high school diploma and 2 years of experience. No license is required beyond a driver's license, although the labor supervisor and at least 2 laborer A's have a special driver's license which permits them to drive a large dump truck and a large earth-moving machine. Laborers drive backhoes and front-end loaders and use jackhammers and chain saws. They are issued face

masks, goggles, and hard hats. The parties have stipulated that the labor supervisor and laborer A's would be included in a plant and operations unit, should the Regional Director find it appropriate. There have been no laborer B's for the last 1-1/2 years, and the department's current policy is not to fill the position.

Plant and operations employees work a day shift, generally 7 a.m. to 3:30 p.m. or 8 a.m. to 4:30 p.m., Monday through Friday. One mechanic from the mechanic shop is on duty evenings and nights (4:30 p.m. to 7 a.m.) as well as weekends and holidays to respond to building emergencies. The mechanics, usually an A but sometimes a B, rotate coverage for the off shifts. Mechanics occasionally work overtime; the other trades work overtime rarely, if ever. A few of the plant and operations employees—the first class fireman, the signmaker in the paint shop, the carpenter who repairs furniture—spend most of their time in the shop. Most of the tradespeople, however, spend the vast majority of their time outside their shops working on multiple assignments throughout the McLean campus. They check into their respective shops at the beginning and end of each day and as needed throughout the day. The complex of maintenance shops in the middle of the campus includes a lunchroom which has a shower, television, and small kitchen for plant and operations employees. Most of the plant and operations employees take their breaks and eat their lunch in the plant and operations lunchroom or in a lunchroom in the garage or in the hospital cafeteria in the DeMarneffe building which is used by all McLean employees, although they usually eat with other tradespeople. The mason/plasterers usually eat in the mason shop.

Work comes to the plant and operations department in several ways. Most often a manager or supervisor in a hospital department that has a maintenance problem fills out a requisition form which is mailed over to plant and operations. The plant and operations secretary passes the request to the project manager, maintenance manager, or director, who in turn puts the request in the appropriate foreman's mailbox. The foreman assigns the job to one of the employees in his shop. In emergency situations the requests come in by telephone. Routine preventive maintenance and cyclical tasks are generated by the plant and operations department itself. The bulk of the work of the plant and operations employees involves responding to these requests for repairs in buildings all over the campus, including inpatient units, office areas, and research labs. Plant and operations employees usually work alone or with another employee or two from their shop on these tasks, depending on the nature of the job. Occasionally employees from more than one shop work together on a maintenance job. For example, four or five times a year an electrician works with a plumber doing "steam trap" work, an electrician may help the fireman work on the emergency generators, painters may need to call in the carpenters when they discover rotting wood, and a plumber A from the pipe shop does 99 percent of the welding on the vehicles in the garage.

In addition to routine maintenance and repairs, the plant and operations department has been involved in several major renovation projects over the past few years. In 1987–1989 the plant and operations department totally renovated the space in the Ralph Lowell Labs. During the same period the department remodeled space to create a new primate re-

search lab, a \$600,000 project. Plant and operations employees did a major remodeling job at the Ledge Building, a community residence, where they put in a large new kitchen, ripped out the roof, added a bedroom, waterproofed the foundation, and renovated the entire lower level, a \$200,000 project. Similar projects include the renovation of Bowditch, Codman 3, and South Cottage into community residences, and the complete remodeling of the Hospital pharmacy, the blood lab, Waverly House, and the Oaks building. During these major renovation projects all plant and operations trades—carpenters, electricians, plumbers, masons, painters, HVAC—are involved and work together. The trades do not assist one another in their work on such projects, i.e., a plumber will not assist a carpenter in carpentry work. The work is sometimes done in stages, e.g., electrical and plumbing work is generally done before plastering. The various trades work alongside one another, however, and must coordinate their work. Some project work was undertaken in 1991 and 1992, and major renovations for the Waverly Oaks community residence, including the addition of a new kitchen and bath, are currently in the planning stages. The bulk of the project work by plant and operations was done 2 or 3 years ago, however, and has since declined in frequency.

Those plant and operations employees who are required to have a license for their work are responsible for paying any fees associated with their license or its renewal. McLean supplies the power tools and equipment used by the various trades, but employees must supply their own hand tools, in some instances valued at several hundred dollars. Tradesmen from different shops regularly borrow each other's tools. Some of the carpenters, electricians, and plumbers supplement their income by working as independent contractors in their off-duty hours and occasionally borrow McLean power tools for this purpose.

The other nonsupervisory, nonprofessional employees who the Employer asserts should be included in a unit with the plant and operations employees are employed by numerous departments throughout the Hospital. The building and laundry services department employs about 75 employees, of which the largest group are building service employees A and B. Building service employees perform basic cleaning and custodial services for inpatient units and offices as well as some of the community residences. One building service employee is assigned to each inpatient unit and others work throughout the Hospital as needed. They use equipment such as industrial vacuum cleaners and floor sanders. Building service employees are required to have a high school education and a truck driver's license. Building service employees are assigned work by crew leaders who prioritize projects but who do not have supervisory authority. Also in this department are five to seven movers who move furniture and an incinerator operator who works in the powerhouse near the powerhouse engineer and the fireman. These employees are required to have a high school diploma plus 1 to 3 years of experience. A pest control technician, stipulated to be a technical employee, also works out of this department and is required to have a high school diploma and a state license. Finally, the department has two to four laundry service workers, who pick up and deliver clean linens to and from patient units, and a seamstress. Building service department employees generally work a day shift, although a small complement of building service employees A work an evening shift from

4:30 p.m. to 12:30 a.m. Most of the employees in this department, with the exception of the incinerator operator and the seamstress, report each morning to their base of operations in the building services area to get their assignments and spend the remainder of their day moving around the Hospital.

The dietetic and food services department employs about 45 food service workers in various categories, including food service workers, cooks A and B, apprentice cook, cashier, eight nonsupervisory lead positions (e.g., lead ware wash person, lead sanitation person, and lead transportation person), and a receiver/storekeeper. The employees in this department prepare and serve food in the Hospital's cafeteria in the DeMarneffe Building, run the cafeteria cash register, deliver groceries and meals to inpatient units for those patients who are unable to eat in the cafeteria, prepare catered food for Hospital functions, clean the kitchen, and purchase and store food supplies. McLean also employs a chef at the Arlington School. Employees in this department are generally required to have only a high school diploma; cooks A and B, the leadpersons, and the receiver/storekeeper must also have from one to 3 years of related experience, depending on the position, and the receiver/storekeeper must have a driver's license. These employees work shifts which start anywhere from 3:30 to 4 a.m. to midafternoon. The last shift leaves around 9:30 p.m. They work weekends and some rotate shifts.

The communications department runs the Hospital mail room, print shop, escort service, messenger service, and telephone service. This department has several categories of nonprofessional employees: mail room assistants sort mail and do photocopying, messengers transport documents and patient files around the Hospital, and escorts accompany patients to clinical appointments, usually on the Hospital grounds. The print shop coordinator produces Hospital pamphlets and brochures and must have 2 to 3 years of experience as a printer. These are day shift positions. Eight to twelve console operators located in the administration building lobby answer the phones, page staff, issue visitor passes, and operate a radio system. The console operators cover the phones 24 hours a day, 7 days a week. Finally, a directory coordinator on the day shift updates the hospital phone directory. All of these positions require a high school diploma. The console operators and directory coordinator must also have one year of experience, and the messengers and escorts are required to have a driver's license.

The materials management storeroom receives and delivers supplies for other Hospital departments. It has a receiver who unloads supplies from trucks and may use a motorized pallet truck. The storeroom has two storekeepers who fill orders for supplies. One drives a van around to deliver supplies to the various departments; one works at the window in the storeroom where McLean staff may come to pick up supplies. These are day shift positions and require a high school education.

The largest single nonprofessional classification at McLean is that of mental health specialist. Some 225 to 250 mental health specialists I and II⁴ provide direct care to patients on

⁴There are currently about five employees in the mental health specialist II position. It carries the same duties and qualifications as

Continued

McLean's 14 inpatient units.⁵ Mental health specialists are part of the nursing department and work under the direction of clinical nurse supervisors. Their responsibilities include assisting patients in the activities of daily living; performing "safety checks" on patients (periodic observation of patients who may be dangerous to themselves or others); escorting patients who are too risky for the escort service; leading patient therapy groups; documenting patient records; participating in rounds and treatment team discussions concerning patients; performing crisis prevention and intervention with violent patients; and performing "sharps counts" (periodic counting of knives and other sharp objects to ensure that none have been taken by a patient). Mental health specialists must have an associate's degree in the human services field or equivalent experience in human services. More than half of them have a bachelor's degree. Upon hire they undergo a 3-week orientation program which provides training in CPR, safety checks and sharps counts, crisis prevention, and crisis intervention.

Mental health specialists use stethoscopes and blood pressure cuffs to take vital signs and also use patient restraints and bedpans. They must provide coverage 24 hours a day, 7 days a week, and workday, evening, and night shifts. The night staff works permanently on that shift; the remaining mental health specialists rotate day and evening shifts. As an option, mental health specialists and registered nurses may work four 10-hour shifts each week; they are the only McLean employees who work such a schedule. Some registered nurses and mental health specialists routinely work two 12-hour shifts on the weekend for which they receive 40 hours' pay. No other classifications at McLean have such an arrangement. There is no position comparable to that of a mental health specialist in a general acute care hospital, other than in a psychiatric unit.

The nursing department also employs 19 administrative unit assistants (AUAs) who work primarily at the nurse's station in each inpatient unit. Fourteen AUAs are permanently assigned to a particular inpatient unit; five AUAs float to provide coverage for AUAs who are on vacation or sick. The job of the AUA is to answer the phone at the nurses station, set up appointments for patients, keep patient records current, order supplies for the unit, and call plant and operations if something on the unit needs repairs. They work a day shift Monday through Friday and are required to have a high school education plus 1-year of clerical or hospital experience.

The rehabilitation services department works with patients to develop vocational, social, and daily living skills. Non-professional employees in this department include coffeeshop supervisors,⁶ coffeeshop assistants, and rehabilitation assistants who act as job coaches for patients working in the Hospital coffee shop, greenhouse, thrift shop, and computer education program. These employees work a day shift and have a high school education.

the mental health specialist I, but higher pay, and is being phased out through attrition.

⁵A few employees with the title patient care worker work in McLean's Hall Mercer Children's Center and perform work similar to that of the mental health specialists.

⁶The parties agree that the position of coffee shop supervisor is not a supervisor as defined in the Act.

The community residential treatment program provides care in a residential setting for patients who no longer need the intensive care available in an inpatient unit but who are not yet ready to return to their homes. Numerous nonprofessional employees work in McLean's eight on-campus and five off-campus community residences.⁷ Community residence counselors and senior community residence counselors provide direct patient care 24 hours a day, somewhat analogous to the care provided by the mental health specialists on the inpatient units. House managers,⁸ relief house managers, house parents, and relief house parents oversee the administration of the community residences. These positions generally require an associate's degree. Community residence specialists and senior community residence specialists function in a role somewhat analogous to that of the AUAs on the inpatient units; they attend to administrative matters such as ensuring that food is purchased, arranging for maintenance of community residential vehicles, and overseeing housecleaning. In addition one community residence has a supervisor of building operations, who acts as a general custodian. This position requires a high school diploma. The incumbent has some experience with plumbing, electrical work, and painting. He will do minor repairs himself, but calls in the plant and operations department for repairs beyond his ability. Finally, one community residence has a cook.

In its research labs and clinics McLean also employs several categories of employees the parties agree should be classified as technicals under Board precedent. In the pharmacy are five pharmacy technicians and a pharmacy intern who place orders to distributors, weed out expired medications, work at the pharmacy window, and generally assist the pharmacist. They work a day shift, Monday through Friday, and are confined to the pharmacy. The technicians have a high school education; the intern is a college student in the process of getting a B.S. in pharmacy. In the Hospital's clinical lab are a phlebotomist and six medical technologists. The phlebotomist goes to the inpatient units to draw blood samples from patients. A high school education and some experience is required for the position. The medical technologists use microscopes and analyzers to test the blood samples and report the results to physicians. They must have a college degree and be certified (or eligible to be certified) by a national certification agency or the American Society of Clinical Pathologists. The clinical lab employees work primarily a day shift, Monday through Friday, but sometimes work weekends, for which they are paid overtime.

In the medical clinic, which provides care for patients on the inpatient units who also have medical problems, is a CPR/medical equipment technician. This employee spends half of his time buying and checking medical equipment and he also monitors the "code carts" which are used in the event of cardiac arrest to make sure they are functioning properly. As CPR program coordinator he trains nurses, mental health specialists, and other staff in CPR. He also works 8 hours a week as a mental health specialist. The employee in this position must have a high school education and a

⁷The parties have stipulated that these employees would be properly included in an overall nonprofessional unit.

⁸House manager Roy Schmarkey has been stipulated to be a supervisor within the meaning of the Act. The parties have stipulated that the remaining house managers do not have supervisory authority.

Heart Association instructor/trainer card. An emergency medical technician is preferred.

The Hospital also employs two licensed practical nurses, one in the medical clinic and one in one of the inpatient units. They perform the same duties as registered nurses, but must work under the supervision of a charge nurse. LPNs must have 12 to 18 months of training and take an exam to obtain their license. A small number of MRI technologists, also stipulated to be technical employees, work in the Hospital's brain imaging center.

Radiology has an employee who functions as a half-time radiologic technologist and half-time KG technician. This position requires a high school graduate who is a registered radiologic technician, a state certification that is obtained by passing an exam. No license or certification is required for her work in her capacity as the EKG technician.

The research department has numerous nonprofessional employees. Most basic research is performed in the laboratories at McLean's Alcohol and Drug Abuse Research Center and at the Mailman Research Center, which includes the Ralph Lowell Laboratory, a brain tissue resource center, a molecular genetics lab, and a lab for psychiatric research. Some of the laboratory research involves work with animals. Clinical research involves interviewing and/or working with actual patients and is performed on the inpatient units, in outpatient clinics, in community residences, or wherever the subject patients may be. Nonprofessional research positions⁹ include laboratory assistant, animal care technician, clinical research technician, general laboratory technician, senior project assistant, laboratory research technician, animal research technician, and senior animal care technician. These employees usually have a bachelor's degree and may be involved in such tasks as caring for, treating, and sacrificing laboratory animals; sectioning and analyzing tissue; summarizing data; or ordering laboratory supplies.

McLean's nonprofessional complement also includes a large number of clerical employees employed in departments all over the Hospital. Within the medical records department are 13 transcribers and anywhere from one to three employees in each of the following positions: discharge record control clerk, file clerk, correspondence clerk, discharge record analyst, and statistics clerk. These employees maintain patient records, code records for billing purposes, ensure all required documentation is present in patient records, transcribe dictation, and handle requests for patient records by clinicians, insurance companies, patients, and patients' families.

The admissions department has admissions recorders who obtain demographic and financial information from incoming patients and a census statistical recorder who operates the automated system that keeps track of the Hospital's census each day. McLean's ambulatory service runs five major and numerous smaller outpatient clinics which employ clericals in several positions. The registration and accounts coordinator obtains demographic and financial information for billing and medical records purposes and makes appointments. Records clerks maintain outpatient medical records. Clinical accounts coordinators greet patients when they arrive for

their appointments and receive payment for outpatient services. A senior project assistant analyzes data from patient survey questionnaires. The fiscal service department is responsible for patient billing, payroll, and accounts payable and employs payroll clerks, accounts payable clerks, a cashier, patient accounts representatives, patient accounts coordinators, claims processors, accounting assistants, and accountants (weekly). The registrar's office employs a data entry clerk. Finally, in virtually every department in the Hospital McLean employs clericals in the titles of department secretary, office assistant, and/or executive office assistant who do typing and filing, answer the telephones, and perform general office work. All of these clerical positions are generally day-shift positions and generally require a high school education plus some related experience; the statistics clerk in the medical records department must also be certified by a private agency as an accredited records technician.

McLean's remaining nonprofessional employees include library assistants and an audiovisual technician who work in the library cataloguing materials and assisting staff who use the library. The development office, which handles McLean's fund-raising activities, employs nonprofessionals in the titles of gift processing supervisor and development assistant.

McLean issues uniforms to plant and operations employees, as well as to employees in building and laundry services, dietetics, security, purchasing, and research. The remaining nonprofessional employees, including mental health specialists, do not wear uniforms. Employees in plant and operations, building and laundry services, and purchasing are responsible for cleaning their own uniforms; the other uniforms are cleaned by McLean. All employees of McLean wear a badge that identifies them by department.

Nonprofessional employees within support services ultimately report to Director of Support Services Harold Shea, as do plant and operations employees, with two or three levels of supervisors in between. For example, building services employees A and B report to a supervisor who reports to an a.m. or p.m. coordinator who reports to the director of building services, who reports, in turn, to Shea. Food service workers report to a food service supervisor who reports to the assistant director of food service, who reports to the director of dietetics and food service, who reports to Shea. Many of the other nonprofessional employees in the unit sought by the Employer do not share any common supervision with plant and operations employees beyond that provided by Steve Mirin, the general director of the Hospital. For example, the single largest classification of nonprofessional employees, mental health specialists, report to one of several clinical nursing supervisors in the nursing department, who report to an associate or assistant administrator for nursing, who report to the administrator for nursing, who reports to Mirin.

Of the current nonsupervisory plant and operations department skilled maintenance employees, 13 were transferred from positions within other plant and operations shops, the vast majority of those transferees being former laborers who worked their way up to positions as carpenters, electricians, apprentice electricians, mechanics, masons, plumbers, and fireman. Ten transferred into plant and operations from other McLean departments, seven being former building services employees and three being former security assistants, a classification which would not be included in a nonprofessional

⁹The parties dispute the professional status of the classifications of senior clinical research technician, senior animal research technician, research project administrative coordinator, and senior laboratory research technician.

unit. Of the seven former building services employees, five transferred to laborer A or B positions, and two transferred to mechanic B slots. (Four out of the seven have since been promoted to mechanic B, mechanic A, electrician A, and plumber A.) The most recent of these transfers was in 1987. A plant and operations secretary was previously an accounting assistant in another department. There have been no transfers of plant and operations employees to any other department. Of the employees in the larger nonprofessional unit proposed by the Employer, over 130 employees have transferred into their current department from another McLean department. These transfers have occurred between all types of positions, whether service, maintenance, technical, or clerical in nature.

The record demonstrates that there is relatively little workrelated contact between the skilled maintenance employees and other nonprofessional employees. Plant and operations employees from each of the various shops testified that they have little or no regular working contact with building services crews, laundry workers, dietary personnel, or any other nonskilled maintenance employees. Repair work does take plant and operations employees to buildings all over campus, including patient care areas, labs, and offices. When the tradesmen arrive to make a repair at an inpatient unit, for example, they usually identify themselves to the AUA on the unit, perform the repair, and let the AUA know when they are done. Beyond checking in and out of work-sites, with rare exceptions,¹⁰ they work independently at job sites, including inpatient units, and are not assisted in their work by other non professionals. For example, plumber Henry Greene testified that he has no working contact with building services crews, dietary, laundry, or patient care employees, and that he lets himself into locked units with his own key and has no contact with employees on the unit unless he can not find the problem on his own. He does have to let affected employees know when plumbing repairs require water shutoffs. Electrician Tom Galante testified that he has no regular contact with building services, laundry or dietary employees, or movers; that he receives no assistance from nonplant and operations employees in the performance of his work; and that his only contact with other nonprofessionals is when he checks in and out of job sites. Mechanic William McDonnell reported that he has no regular contact with any building services, dietary, or laundry employees and that his only contact with the staff on patient units is to check in and ask them to clear the room of patients if necessary.

Director of Support Services Harold Shea testified that he was hired by McLean specifically to integrate and coordinate the operations of the five departments he directs: plant and operations, building and laundry services, dietary, environmental health and safety, and security. In this regard, for example, a carpenter works with the seamstress from building services to hang draperies about 10 times a year; a mechanic and a building services employee have recently begun to work together to clean fin-tube heating units; the fireman first class spends 45 minutes per week performing maintenance

work on the incinerator, which is operated by building services. About once a week at catered functions the dietetics department prepares the food, building services cleans, and an electrician from plant and operations does the electrical work required to set up speakers and overhead projectors. There is a list of volunteers from building and laundry services and dietary who will supplement the plant and operations crew for emergency snow removal and clean up of debris after storms, but there has been no need to use this list in the last year. Twice in 4-1/2 years, a mason has asked the pest control technician from building services to remove bees from the area where he was working.

Shea conceded, however, that plant and operations employees do not work side by side with nonplant and operations employees on a daily basis. With the exception of emergency snow and debris removal, there are no situations where plant and operations employees are actually assisted in the performance of their work by nonskilled maintenance employees. Regarding his mandate to coordinate the work of the support services departments, Shea also testified that at his previous job at Lawrence General Hospital, an acute care, general hospital, he headed up departments similar to those he now directs at McLean, and that it was also his goal at Lawrence General to coordinate those departments and to create a team approach.

The record demonstrates that there is substantial interaction among many of the nonplant and operations, nonprofessional employees at McLean. For example, many building services employees are permanently assigned to clean a particular patient unit and have daily contact with the mental health specialists and administrative unit assistants on that unit. Mailroom assistants and messengers interact with secretaries as they pick up and drop off mail. Escorts may report to a mental health specialist or AUA when picking up a patient. Food service workers have frequent contact with unit staff when delivering meals to patient units and with employees whom they serve in the cafeteria. The cashier cashes checks for all employees. The storekeepers have contact with any employee who comes to pick up supplies. Pharmacy technicians interact with mental health specialists and AUAs who come to the pharmacy to pick up medications. Community residence counselors consult with mental health specialists concerning patients who have transferred.

The evidence submitted on wages reveals that 49 (73 percent) of the 67 plant and operations employees in the petitioned-for unit (the higher paid group) are employed in positions in grades 12 through 15, which carry a maximum annual salary ranging from \$32,148 to \$37,084.¹¹ Eighteen (27 percent) of the plant and operations employees (the lower paid group) fill positions in grades 8 through 11,¹² with max-

¹⁰Carpenter Anthony Martino testified that a mental health specialist follows him around from room to room when he checks the security screens on the windows in patients' rooms, which he does once or twice a month.

¹¹For purposes of this analysis I have relied upon Employer Exhibit 36 in Case 1-RC-19750, which conveniently sets forth the annualized minimum and maximum salaries for positions in the Employer's proposed nonprofessional unit by title. A three percent salary increase, which went into effect in March 1992, is not reflected in Employer Exhibit 36. The relative standing of the various positions with regard to wages would, however, remain unchanged after the increase.

¹²I have not included within this group the laborer B, a grade 5 position, because of the testimony that there are currently no laborer Bs and that the Employer has no plans to fill the position. I note

imum annual salaries ranging from \$26,541 to \$30,878. Of the 122 nonplant and operations classifications filled by some 750–800 employees which the Employer seeks to include in this unit, only two classifications (a small number of MRI technologists¹³ and a small number of employees in the title medical technologist II)¹⁴ are higher paid than any plant and operations employees. Employees in eleven classifications (one print shop coordinator, one radiologic technologist, two LPNs, a small number of medical technologists I, fewer than 10 cook A's, and an unknown number of employees in the classifications electronics technician III, polysomnography technician, project coordinator, neurophysiology technician, administrative secretary and conference coordinator) receive maximum annual salaries in the same range as the higher-paid plant and operations employees. An unknown number of nonprofessional employees in 49 nonplant and operations classifications are employed in positions carrying the same maximum salary range as that of the lower-paid plant and operations group.¹⁵ Employees in 60 nonplant and operations classifications earn less than even the lowest-paid plant and operations employees. These classifications include some 225 to 250 mental health specialists I, 19 administrative unit assistants, and an unspecified number of building service employees A and B, the largest group out of the 75 employed in the building services department. Plant and operations employees earn anywhere from 9 percent to 52 percent more than mental health specialists I, the most numerous nonprofessional classification, which is a grade 6 position.¹⁶

that the only Grade 11 position in the plant and operations department, fireman second class, is also currently vacant.

¹³ Director of Human Resources Gary Kalajian testified that the Hospital employs approximately three to five MRI technologists. Dr. Lloyd Sederer, associate director for clinical services, testified that there were one or two.

¹⁴ Arnold Saitow, associate director for fiscal affairs, testified that there are six medical technologists but was unaware that there were both medical technologists I and II positions. The record is unclear as to how many medical technologists fall into each classification.

¹⁵ The record provides the number of employees in each classification in the plant and operations department but not for all of the nonplant and operations, nonprofessional classifications.

¹⁶ The Employer has computed "average" minimum and maximum salaries for the plant and operations and nonplant and operations nonprofessionals and asserts in its post-hearing brief that the average maximum salary of the plant and operations employees is 9.7 percent higher than the average maximum salary in its proposed unit and 10.6 percent higher than the average maximum salary of all nonprofessionals excluding plant and operations. These "average" salaries were apparently computed by adding the salary for each classification, regardless of the number of employees in each classification, a number which is, in many cases, unknown, and then dividing by the number of classifications. Thus, for example, a classification with one employee was apparently accorded the same weight as a classification with 225–250 employees under the employer's analysis. I find this calculation to be meaningless as an indicator of the average wage level of employees in the two proposed units. Further, there appear to be inaccuracies in the Employer's calculations of the percentage differences between groups. Similarly, the Petitioner's approach to comparing wages solely by computing the percentage differences between the salaries of various positions sheds no light as to the true difference in wages between the two groups because it fails to take into account the number of employees in each classification.

All nonprofessional employees at McLean are subject to a common set of personnel policies and fringe benefits. Plant and operations employees receive the same vacation, holidays, time off with pay, bereavement leave, jury duty leave, leaves of absence, medical insurance, dental insurance, life insurance, business travel insurance, long-term disability coverage, pension plan, and tuition reimbursement as other nonprofessional employees. McLean's employee handbook applies to all nonprofessional employees. McLean's human resources department advertises openings for and screens all nonprofessional applicants. All nonprofessional employees are subject to a uniform evaluation and disciplinary procedure, although it is the individual departments which actually do the evaluations and issue discipline, not human resources. All new nonprofessional employees attend the same new employee orientation and patient behavior orientation and are eligible to attend other seminars offered to all employees. All employees use a common entrance and have equal access to parking areas. A child care center, credit union, cafeteria, and recreation building are open to all employees.

The record reflects certain distinctions between the operation of a psychiatric hospital versus a general acute care hospital that the Employer alleges have an impact on the role of skilled maintenance employees and other nonprofessional employees in a psychiatric setting. First, in addition to the use of psychotropic medications and intensive psychotherapy to treat patients, an important component of the treatment of patients in a psychiatric hospital is the "therapeutic milieu." A therapeutic milieu essentially connotes an environment in which patients feel safe and understood. This includes ensuring the physical safety of patients who may be suicidal or violent. It also connotes a setting in which patients are surrounded by staff who relate to them in a supportive, therapeutic manner.

Because of concern for the physical safety of patients who may try to hurt themselves or others, skilled maintenance employees at a psychiatric hospital, unlike those in a general acute care hospital, must take special precautions with their tools and any materials they work with which may pose a danger to patients. They must keep all tools and equipment on their person and/or otherwise secure, particularly when working in patient areas. The concern for patients' physical safety applies to all nonprofessionals, who must all take care not to allow a patient to escape from a locked unit and who must all try to prevent patient access to common but potentially harmful objects, e.g., soda cans, glass bottles, or light bulbs which patients may use to cut themselves; linens which patients may use to hang themselves; or scissors, knives, or other "sharps," which must be locked and counted.

Because psychiatric patients may exhibit unusual behavior and because many nonclinical nonprofessionals may come into contact with patients, either in the course of their work or simply moving about the campus, McLean requires all new nonprofessional employees to attend a patient behavior orientation. This is a one-time training session at the outset of employment which lasts 1-1/2 hours and is taught by a clinical nurse educator. During the training session new employees are given some basic information about mental illness and given some instructions about how to interact with patients. Essentially they are told to respect patient privacy and confidentiality; treat patients with respect and dignity; keep tools and equipment secure; get a supervisor, security,

or member of the nursing staff if a patient becomes problematic; and share with nursing staff any personal information a patient tells them. They are told not to discuss their personal lives with patients; not to date patients or give out their phone number or address; and not to give patients anything such as money, matches, or cigarettes. In fact, according to Director of Support Services Hal Shea, it is McLean's policy to discourage plant and operations staff, as well as other non-clinical workers, from interacting with patients. The plant and operations employees are expected to complete their repair work in a patient area as quickly as possible and get off the unit, without getting involved with patients.

The Petitioner represents bargaining units of skilled maintenance workers at eight area hospitals, two of which have psychiatric units. All of these skilled maintenance units are smaller than the unit proposed by the Petitioner at McLean and all include helper-type positions or grounds people similar to the laborers at McLean. None include cleaning, dietary, or laundry workers. Most of these hospitals also have bargaining units of nurses or service employees; one has no other bargaining unit. There have never been any strikes or jurisdictional disputes by employees represented by the Petitioner. The only instance of picketing by Petitioner's members was at Framingham Union Hospital for informational purposes for 2 weeks in 1987 or 1988. There has been only one strike by another union at one of these hospitals. That was in the early 1980s at Lynn Hospital, and the employees represented by the Petitioner at that hospital did not honor the picket line. There have been instances of picketing by other unions at these hospitals, but Petitioner's members have never refused to cross the picket lines, nor has Petitioner ever discouraged other employees from crossing a picket line.

Through the testimony of Roy Ettlinger, who has served as an administrator in several public and private psychiatric institutions, McLean attempted to demonstrate that multiple bargaining units would have a harmful effect on the therapeutic milieu at McLean. Because Ettlinger has managed psychiatric facilities with multiple unions, one union, and no unions, the Hospital claims that he is in the unique position of being able to compare the effect on patient care of these various bargaining unit configurations. Ettlinger worked for several years in a managerial capacity at Marlboro Psychiatric Hospital in New Jersey, a public psychiatric hospital which had four bargaining units: a technical and maintenance unit, a unit of other non professionals, a professional unit, and a unit of police. He described two instances of work jurisdiction disputes which occurred while he was there. In one incident, dietary and housekeeping employees who were in different bargaining units each claimed the other classification should clean tables. In another instance, a plumber, a mental health worker, and a housekeeper had a dispute over who should remove a patient's belongings from a bathroom so that the plumber could make a repair. According to Ettlinger, these incidents were brought up by patients in community meetings because psychiatric patients are very sensitive to conflicts between staff and may wonder if they are the cause.

As further evidence of the alleged dangers of multiple bargaining units, Ettlinger also described an incident at Marlboro Psychiatric Hospital involving drivers and mental health workers, who were in different bargaining units. Patients had

been complaining about rudeness by the drivers, so management sought union permission to use the mental health workers as drivers. The mental health workers did not seek to do the work, nor did they object to doing it, but they refused to take away the drivers' work unless the drivers agreed, which the drivers did not.

As another example of the potential danger posed by multiple bargaining units, Ettlinger cited an instance at Marlboro Psychiatric Hospital in which one union struck and the other unions crossed the picket line to work. This, according to Ettlinger, caused angry feelings between employees in the different bargaining units, which disrupted and undermined patient treatment, leading to an increase in acting-out behavior and assaults by patients on other patients and staff. Ettlinger also testified, however, that some members of the very same bargaining unit that struck also chose to work during the strike.

Finally, Ettlinger stated that having four different bargaining units at Marlboro Psychiatric Hospital was detrimental because it caused a drain on management's time and energy to negotiate and administer four separate collective bargaining agreements.

Unit Determination: Conclusion

The Petitioner would limit the appropriate unit to skilled maintenance employees employed in the plant and operations department. The Employer contends that the unit must include all nonprofessional employees of the Employer.

In 1989, after extensive hearings, the Board promulgated at 29 CFR Sec. 103 its rule for determining appropriate bargaining units in the health care industry. Under that rule, there are eight presumptively appropriate bargaining units in health care facilities, including a separate unit of all skilled maintenance employees. While the rule was originally intended to cover psychiatric facilities, the Board eventually determined that the rule would apply only to acute care hospitals and that bargaining unit determinations for psychiatric hospitals and other nonacute care facilities should continue to be made on a case-by-case basis.¹⁷ In *Park Manor Care*

¹⁷ The Employer contends in a motion to dismiss (E. Exhs. 1a and 1b), which has not been expressly withdrawn, although it was not renewed in its brief, that because the Board's rules governing bargaining units in health care facilities specifically exempted psychiatric facilities from coverage, unit determinations in psychiatric facilities continue to be governed by the disparity of interest test set forth in *St. Francis Hospital*, 271 NLRB 948 (1984) (*St. Francis II*), under which separate maintenance units were routinely rejected by the Board. The motion is denied. The proper standard for determining appropriate bargaining units in nonacute care health facilities was announced by the Board in the *Park Manor Care Center* decision, described below. Because the *Park Manor* decision was issued by the Board the day before the Employer submitted its motion to dismiss, the Employer did not have the benefit of that decision at the time the motion was submitted. The Employer's reliance on *Brattleboro Retreat*, 1-RC-19498, a decision in which I relied on the *St. Francis II* disparity-of-interest test in dismissing a petition for a technical unit in a psychiatric hospital, is similarly outdated. Shortly after that decision issued on April 11, 1991, the new health care rules went into effect, *Park Manor* decision was issued, and I reconsidered my decision in *Brattleboro Retreat* under the new standard announced in *Park Manor*. *Brattleboro Retreat*, Case 1-RC-19742 (Dismissal letter from Regional Director to counsel for Petitioner

Center, 305 NLRB 872 (1991), the Board addressed the standard by which the Board will determine appropriate bargaining units in nonacute health care facilities. Under the “pragmatic or empirical community of interests approach,” set forth in *Park Manor*, the Board will consider background information gathered during rulemaking and prior precedent involving either the type of unit sought or the particular type of health facility in dispute, as well as traditional community of interest factors. The Board suggested that it would be helpful to compare and contrast the work force in the unit sought with the work force in acute care hospitals. Finally, the Board noted in *Park Manor* that certain general principles set forth in the rulemaking procedure are equally applicable to unit determinations in nonacute care facilities:

[I]n exercising its discretion to determine appropriate units, the Board must steer a careful course between two undesirable extremes: If the unit is too large, it may be difficult to organize, and, when organized, will contain too diversified a constituency which may generate conflicts of interest and dissatisfaction among constituent groups, making it difficult for the union to represent; on the other hand, if the unit is too small, it may be costly for the employer to deal with because of repetitious bargaining, and/or frequent strikes, jurisdictional disputes and wage whipsawing, and may even be deleterious for the union by too severely limiting its constituency and hence its bargaining strength. [Footnote omitted.] The Board’s goal is to find a middle-ground position, to allocate power between labor and management by “striking the balance” in the appropriate place, with units that are neither too large nor too small. [Footnote omitted; 53 Fed.Reg. 33904, 284 NLRB 1534.]

Id. at 5.

Looking first to the Board’s experience during rulemaking, I note that while the Board did receive a great deal of evidence and input regarding appropriate units in psychiatric hospitals, most of that evidence pertained to the differences between the roles of the professionals in psychiatric versus acute care hospitals. With regard to nonprofessionals, however, the Board did observe that there are more paraprofessionals (mental health workers) in psychiatric hospitals than in acute care hospitals and that all employees are specially trained in relating to patients as all employees’ actions have an impact on patient treatment. 53 Fed.Reg. 33930, 284 NLRB at 1570.

The Board’s examination of skilled maintenance employees at acute care hospitals during rulemaking resulted in a finding that these employees constitute a discrete and distinct

group and should be in a separate bargaining unit. The evidence showed that they work with highly complex and sophisticated systems and equipment, and that skilled maintenance jobs consequently require a higher level of skill and knowledge than is required of unskilled service, maintenance, and clerical employees, as evidenced by higher education, licensing, and training requirements. Skilled maintenance employees are frequently contained within a separate department and are not supervised by any supervisors from outside their own department. While they usually share common fringe benefits and personnel policies with other hospital personnel, skilled maintenance employees uniformly have higher wages than service and maintenance employees. Because the operation and maintenance of physical plant systems are the same no matter in which industry they are performed, skilled maintenance employees have separate labor markets and highly mobile cross-industrial career paths, and their wage scales are tied to those of skilled maintenance employees in other industries rather than to wages in the health care industry. Skilled maintenance workers usually have a separate internal labor market within a hospital in terms of career path, with training programs permitting less skilled employees to move into more highly skilled positions and virtually no transfer of clerical or service employees into maintenance positions. Skilled maintenance employees have unique bargaining interests such as access to craft-related education and training programs, tool supply allowances, safety equipment and practices, and input into subcontracting. The Board found that there is a history of separate representation of skilled maintenance units by unions that specialize in representing them, and that there have been few primary and virtually no sympathy strikes in such units. Jurisdictional disputes among skilled maintenance employees have been rare and, when they do occur, occur regardless of representation in one or several bargaining units. As for an alleged trend toward integration of employee functions and interdisciplinary teams in acute care hospitals, the Board found that such a trend would affect only health care personnel and could have no impact on skilled maintenance employees who operate and maintain physical plant systems. 53 Fed.Reg. 33920–33924, 284 NLRB at 1556–1562.

Turning now to prior precedent involving the appropriateness of separate skilled maintenance units in the health care industry, the Board’s treatment of this area prior to rulemaking led to mixed results, frequent dissents by Board members, and criticism by various circuit courts. The Board split three ways in the first lead case in this area, *Shriners Hospitals for Crippled Children*, 217 NLRB 806 (1975). In *Jewish Hospital of Cincinnati*, 223 NLRB 614 (1976), the Board dismissed a petition for a separate maintenance unit, but the Board members disagreed over what test to apply to decide the appropriateness of health care maintenance units. In *St. Vincent’s Hospital*, 223 NLRB 638 (1976), decided on the same day as *Jewish Hospital of Cincinnati*, a majority agreed that a separate maintenance unit was appropriate, but relied on four different rationales. A new standard was established in *Allegheny General Hospital*, 239 NLRB 872 (1978), enforcement denied 608 F.2d 965 (3d Cir. 1979), in which the Board began to apply the same test used to analyze maintenance units in unorganized plants in the industrial sector. Under that standard, the issue is essentially whether the petitioned-for employees are an “identifiable group with

dated March 26, 1992). A request for review is currently pending before the Board.

I also reject the Employer’s contention at page 77 of its post-hearing brief that “by exempting psychiatric hospitals from the regulations calling for a separate maintenance unit, the Board *already* has determined that a separate maintenance unit is not appropriate for a psychiatric hospital such as McLean.” (Emphasis in original.) The Board stated clearly in rulemaking that it had decided to proceed as to psychiatric hospitals “on a case-by-case basis” and gave no indication whatsoever that any particular unit configuration would be automatically precluded. 53 Fed.Reg. 33930, 284 NLRB at 1570 (1988).

a community of interest that is sufficiently separate or distinct from the other unrepresented service and maintenance employees to warrant separate representation.” Id. at 878. Applying traditional community of interest factors to the facts in *Allegheny Hospital*, the Board found that the maintenance employees should be granted their own unit. This approach was also criticized by the courts, however, and the Board’s opinions in this area were characterized by one court as being in a state of “disarray.” *Long Island College Hospital v. NLRB*, 566 F.2d 833, 843–844 (2d Cir. 1977), cert. denied 435 U.S. 996 (1978).

In 1982, in response to judicial criticism that the Board had not given due regard to Congressional concern over undue proliferation of bargaining units in the health care industry, the Board attempted to clarify its approach in *St. Francis Hospital*, 265 NLRB 1025 (*St. Francis I*). In *St. Francis I* the Board announced that it would begin each unit determination in health care cases with a maximum of seven potentially appropriate bargaining units, including a separate maintenance unit, and would thereafter apply the traditional community of interest factors to determine in each case if separate representation was or was not warranted. Under that test, the Board approved a separate maintenance unit in *St. Francis I*. That approach was abandoned by the Board 2 years later in *St. Francis Hospital*, 271 NLRB 948 (1984) (*St. Francis II*), in which it held that the “disparity of interests” test better met Congressional concern over undue proliferation. Under that analysis, sharper than usual differences between the requested group and an overall professional or nonprofessional unit are required in a health care facility in order to justify separate representation, and the Board concluded that the requested maintenance unit at *St. Francis Hospital* was not sufficiently distinct to permit separate representation. Finally, after *St. Francis II* was severely criticized by several circuit courts, the Board decided to engage in rulemaking to make an informed judgment as to appropriate bargaining unit configurations in the health care industry, but to process all petitions under the *St. Francis II* disparity of interests test pending issuance of a final rule. *St. Vincent Hospital*, 285 NLRB 365 (1987). Applying that analysis in *St. Francis Hospital*, 286 NLRB 1305 (1987) (*St. Francis III*), the Board held that a separate maintenance unit was not appropriate under the particular facts of that case. During rulemaking, however, the Board observed with regard to *St. Francis III* that, based on the evidence obtained during rulemaking, it is unlikely that the Board would reach the same result. 53 Fed.Reg. 33923, 284 NLRB at 1561.

I conclude that the case law regarding skilled maintenance units in acute care hospitals prior to rulemaking is too mixed to provide much guidance in this case. As the Board itself noted in rulemaking, “Board Members could agree neither on the general test to apply, nor on the correct results in particular cases.” 52 Fed.Reg. 25143, 284 NLRB at 1517 (1987).

As for skilled maintenance units in psychiatric hospitals, the only Board decision is a 1978 case involving this same employer. In *McLean Hospital*, 234 NLRB 424 (1978), the Petitioner sought to represent a unit of approximately 48 craftsmen and their related helpers and apprentices in McLean’s plant and operations department; the Employer contended that only a unit of service and maintenance employees would be appropriate. Finding that the plant and op-

erations employees shared a community of interest sufficiently distinct to warrant separate representation, the Board noted that they were more highly skilled and consequently higher paid than the service employees, with many of the plant and operations positions requiring a license, a three- to 4-year formal apprenticeship, and or equivalent on-the-job training. The Board observed that the plant and operations craftsmen spent 80 to 95 percent of their time exercising the skills of their trade throughout the hospital complex, and that although they had frequent daily contacts with service employees while performing repair work throughout the grounds, service employees in other departments rarely assisted them in the performance of their duties, and that such contacts did not constitute integration of the service and maintenance operations. The Board also noted that supervision of plant and operations employees was separate, that only plant and operations employees reported to the complex of craft shops, that the plant and operations department maintained a policy of intradepartmental job progression, with laborers being the principal candidates for promotion to apprenticeships in the skilled trades, and that there were few transfers between the plant and operations and service departments.

After considering background information gathered during rulemaking, prior precedent, and traditional community of interest factors, I conclude that the petitioned-for unit of skilled maintenance employees is appropriate. Although all non-professional employees at McLean have certain working conditions, personnel policies, and benefits in common, the skilled maintenance workers share certain working conditions, interests, and benefits which distinguish them sufficiently from the remaining nonprofessionals to warrant separate collective bargaining. In this regard, the role of the employees in the plant and operations department has not changed significantly since 1978 when the Board found those employees to constitute an appropriate unit. Thus, I find that the skilled maintenance employees, who operate complex equipment and systems and in many cases must be licensed and/or have completed a three to 4 year apprenticeship in their trade, are generally more highly skilled and trained than the other non professionals, whose positions generally require only a high school education. They are, as a group, generally higher paid than the vast majority of the remaining non-professionals. Plant and operations employees are still supervised separately by the managers of the plant and operations department and the various shop foremen, who supervise no nonplant and operations employees. The Employer contends that because of the reorganization of the plant and operations department into the “support services” group under Director of Support Services Hal Shea along with building and laundry services, dietetics, environmental health and safety, and security services, that the nonprofessionals in those departments now share common supervision which did not exist in 1978. I do not, however, consider a common supervisor three to four levels up in the chain of command to be significant. *Omni International Hotel*, 283 NLRB 475 (1987) (Petitioner for unit of maintenance employees appropriate where they have separate immediate supervision, notwithstanding the fact that they are jointly supervised at a higher level with other employees.) In any event, the vast majority of the other nonprofessionals are outside of support services and do not

share any common supervision with the skilled maintenance employees.

With the exception of the incinerator operator, plant and operations employees are the only employees who report to the complex of maintenance shops, which contains a lunchroom exclusively for their use. As in 1978, skilled maintenance employees still spend the vast majority of their time performing maintenance and repair work in buildings all over the campus, which does bring them into contact with other nonprofessional employees. With few exceptions, however, these contacts are incidental and generally limited to checking in and out of work sites. With the exception of emergency snow and debris removal, there are no situations where plant and operations employees are actually assisted by nonskilled maintenance employees in the performance of their duties.¹⁸ As in 1978, plant and operations employees still work independently at jobsites, using the skills of their trade in the performance of their repair and maintenance duties, and they are not functionally integrated with the other nonprofessional employees.

The plant and operations department's policy of intradepartmental job progression noted by the Board in 1978 is still in place, with many candidates for apprenticeships coming from the ranks of the laborers. There have been no transfers of plant and operations employees to other departments. Relatively few employees have transferred in to plant and operations from other departments, and those transfers have been to entry level positions. Furthermore, the last such transfer was in 1987.

I also note the striking similarity between the skilled maintenance workforce in acute care hospitals, as described in the rulemaking process, and the skilled maintenance workforce at McLean. Both are highly skilled, as evidenced by licensing and training requirements, more highly paid on average than the remaining nonprofessionals, and separately supervised. Like the skilled craftsmen at acute care hospitals, skilled maintenance workers at McLean have unique bargaining interests such as safety issues, tool supply allowances, reimbursement for license fees, and access to craft-related training programs which are not shared by the other nonprofessionals. I also note that because the mental health specialists, by far the largest classification of nonprofessionals, and many of the nonprofessional employees in the dietary department work evening, night, and weekend shifts, they have bargaining interests different from the skilled maintenance employees, who, with the exception of mechanics, work day shifts only.

The Employer argues that this case is analogous to *Brattleboro Retreat*, Case 1-RC-19742, (Dismissal letter from Regional Director to Counsel for Petitioner, March 26, 1992) ("*Brattleboro II*") in which, using the *Park Manor* analysis, I "rejected a union's petition to divide the nonprofessional employees in a psychiatric hospital into multiple units." Employer's post-hearing brief at 100. In *Brattleboro II* I did reject the petitioned-for unit of technical employees in favor of an all nonprofessional unit. I did not conclude,

¹⁸I note that such coordination as does exist among the departments headed by Director of Support Services Harold Shea is not unique to psychiatric hospitals, as Shea conceded that it was also his mission in his previous post at an acute care hospital to create a team approach among similar departments.

however, as the Employer suggests, "that multiple non-professional bargaining units would be inappropriate in a psychiatric hospital." Id. Rather I found that carving out a separate unit of technical employees at that particular facility, which consisted of *both* a psychiatric hospital and a nursing home,¹⁹ would be inappropriate on the facts of that case, which differ from the facts of this case in many significant respects. In *Brattleboro II* I found that many of the employees in the petitioned-for unit, which consisted largely of mental health workers, like many of the nontechnical, nonprofessional employees, needed only a high school education and did not acquire their skills through technical schools or colleges. Thus the qualifications, skill level, and training of the two groups were similar, as were the wage groupings. I found that the technical employees had important and frequent work-related contact with nontechnical, nonprofessional employees and shared common duties and supervision with some of them. Unlike the acute care hospital technical employees, or the skilled maintenance workers at McLean, the technicals at Brattleboro were directly involved in patient care. The facility, while large, was relatively smaller than McLean, and I found that the specialized staffing and lack of contact often seen in large institutions was not present. By contrast, McLean is a large, world-renowned, elite institution, recently ranked as the top psychiatric hospital in the country. With its highly sophisticated and specialized staff, McLean bears as close a resemblance as a psychiatric facility can to the model of an acute care hospital described by the Board.

Turning to a comparison between psychiatric and acute care hospitals, the Employer contends that psychiatric hospitals are significantly different from acute care hospitals in that, due to the nature of the severely disturbed patient population at psychiatric facilities, all employees, even those who are not direct care workers, may have an impact on patient care. In this regard, all employees, including skilled maintenance workers and other nonprofessionals, are required to attend the patient behavior orientation and have a common duty to maintain patient safety, take special care in interactions with patients, avoid discussions of personal or job-related issues in the presence of patients, avoid socializing with patients, and maintain patient confidentiality. The Employer argues that because of this common duty, unique to psychiatric hospitals, skilled maintenance workers at a psychiatric facility have more in common with the other nonprofessionals than they do at an acute care facility. I find, however, that this concern over nonprofessionals' potential

¹⁹The Employer's posthearing brief refers to Brattleboro Retreat only as a psychiatric hospital, omitting mention of the fact that the facility had two components, a psychiatric hospital and a nursing home. Thus, the Employer's quotation from my decision, "[t]he lessons regarding psychiatric hospitals . . . that caused the Board to exclude them from the rule applicable to acute care hospitals are exemplified by the Employer" (Employer's brief at 102) should read, "[t]he lessons regarding psychiatric hospitals *and nursing homes*." *Brattleboro II* at 4 (emphasis added.). In the decision I discussed the Board's observations in rulemaking that there is generally less diversity among technical and service employees, greater overlap of functions and greater work contact among nonprofessional employees in nursing homes as opposed to acute care hospitals, and I found those observations to be true at *Brattleboro Retreat*. Thus, *Brattleboro Retreat* is, in part, a completely different kind of facility from McLean, and the Employer's reliance on *Brattleboro II* is, to that degree, misplaced.

interaction with psychiatric patients does not make the duties or role of the skilled maintenance workers at McLean significantly different from that of the skilled maintenance workers at acute care hospitals, who the Board has found constitute an appropriate unit for bargaining. The training, which consists of a one-time 1-1/2-hour orientation at the outset of employment, is minimal. The lesson imparted to nondirect care workers, if anything, seems to be to avoid interaction with patients, beyond being polite and courteous, a message which is equally likely to be conveyed to skilled maintenance workers at an acute care hospital. In short, the duty to keep tools secure, to respect patient privacy and confidentiality, to report unusual behavior, and to treat patients with respect and common courtesy does not transform skilled maintenance workers, whose primary responsibility is maintenance of the facility's physical plant, into quasi-direct care workers who have much in common with those nonprofessionals whose primary responsibility is the provision of direct patient care 24 hours a day.

As to Roy Ettlinger's testimony regarding work jurisdiction disputes between various nonprofessional employees at Marlboro Psychiatric Hospital, I find this to be unpersuasive evidence that a separate unit of skilled maintenance employees would pose a threat to the well-being of psychiatric patients at McLean. Even assuming that the situation at a public hospital over which the Board has no jurisdiction has any applicability to private hospitals, and assuming that these events occurred as described,²⁰ there is no evidence that these disputes were anything more than disagreements between individual employees, the kind of disputes which could also occur between employees in the same bargaining unit,²¹ or, for that matter, between unorganized employees. Nor is there evidence that these minor disputes caused work stoppages or picketing. The incident involving drivers and mental health workers, in any event, was not a work jurisdiction dispute where two unions claiming the right to perform the same work caused disruption to hospital operations. This was an employer seeking to make a change in the assignment of work from one classification to another, the type of change that an employer must typically bargain over whether the employees involved belong to one bargaining unit or two.²² While this incident illustrates the point that having a unionized facility does impose limitations on management's unfettered right to make unilateral changes without bargaining over them, the Hospital's preference not to have to bargain over such changes is not at issue here.

Nor am I persuaded by Ettlinger's testimony that multiple units pose a danger to the therapeutic milieu because of possible ill feelings created when one unit strikes and another crosses the picket line. In the incident described by Ettlinger, some members of the very same bargaining unit that struck also crossed the picket line. Notwithstanding Ettlinger's testi-

mony that the striking workers at Marlboro Psychiatric Hospital had no angry feelings toward their fellow bargaining unit members who worked during the strike, common sense dictates that in the event of a strike, strikers are likely to be equally if not more angry at members of their own bargaining unit who cross the picket line than at members of other bargaining units who do so. Thus, having fewer and larger bargaining units at a psychiatric hospital will not necessarily reduce the risk of the type of conflict described by Ettlinger. I note, in any event, that there have never been any strikes or jurisdictional disputes among the employees of the eight skilled maintenance units represented by the Petitioner at area hospitals.

As for Ettlinger's assertion that it was difficult for the management at Marlboro Psychiatric to negotiate and administer four separate collective bargaining agreements, the Board has already determined in its rulemaking procedure that eight bargaining units are not excessive in an acute care hospital, and there is no evidence to suggest that negotiating multiple agreements would be any more difficult, time-consuming, or problematic for the management of psychiatric hospitals than for that of acute care hospitals.

The Employer asserts that the hearing officer committed prejudicial error in excluding Ettlinger's testimony comparing psychiatric hospitals with acute care hospitals. The hearing officer permitted Ettlinger to testify about his experiences in psychiatric hospitals, but excluded his testimony with respect to acute care hospitals on the ground that Ettlinger was not qualified by virtue of his background to testify about acute care hospitals. I concur with the hearing officer's ruling that Ettlinger's experience at acute care hospitals was too limited and dated to qualify him to provide probative testimony on that subject. Ettlinger worked for one year in 1970 at Mount Sinai Medical Center in New York as an assistant to the president where he worked on special projects such as reducing patient waiting time in the outpatient and radiology departments and reducing redundant paperwork in the laboratory. For 3 years in the early 1980s he was a part-time surveyor of acute care hospitals for the Joint Commission on Accreditation of Hospitals, where he was primarily responsible for surveying dietary, maintenance, and housekeeping departments. In 1986 he worked for 9 months as a consultant to Massachusetts Osteopathic Hospital while setting up a gero-psychiatric unit, where he spent some unspecified amount of time working with other hospital departments. For 2-1/2 years in the late 1980s Ettlinger sat on the board of trustees of the Massachusetts Hospital Association, which primarily represents acute care hospitals, and attended Association meetings during which such issues as the reimbursement system for general hospitals, quality assurance, and the relationship of the medical staff to general hospitals was discussed. Ettlinger testified that he has never personally supervised nurses or any other types of employees in an acute care hospital, directly or indirectly. He has never worked in patient care areas in an acute care hospital, nor has he ever worked in or supervised a skilled maintenance department in an acute care hospital. His service on the board of trustees of the Hospital Association did not provide any experience which would provide insight into the role of skilled maintenance workers at an acute care hospital or their community of interest with other nonprofessionals. The hearing officer's ruling is affirmed.

²⁰ I find that Ettlinger's testimony concerning these incidents was rather vague, as he could not remember the names of the individuals involved, the dates that they occurred, or whether a grievance was filed over them.

²¹ I note that the plumber and the housekeeper involved in one of the incidents were in the *same* bargaining unit.

²² I note that the hospital management attempted to achieve this change during the term of its collective bargaining agreement with the union and never made a proposal during regular contract negotiations to effect the change.

The Employer contends that the hearing officer also erred in striking from the record Ettlinger's testimony concerning the frequency of disputes between the unions at Marlboro Psychiatric Hospital. After describing four such disputes, Ettlinger testified that they were "common occurrences," but he was unable to recall any further examples. I affirm the hearing officer's ruling that the testimony be stricken in light of Ettlinger's inability to recollect any specifics.

The Employer also argues that the hearing officer committed prejudicial error by preventing McLean, in five instances, from fully developing evidence relevant to this case. Specifically, the Employer complains that the hearing officer barred as cumulative testimony by Dr. Philip Levendusky, director of ambulatory services, regarding how the therapeutic milieu

could "break down" to the detriment of patients, testimony by Harold Shea, director of support services, concerning the location of the work assignments of the public works employees, testimony by staff nurse Paula Zimmerman regarding the types of psychiatric illnesses treated at McLean, testimony of Michele Gougeon, associate general director for hospital operations, regarding whether a majority of plant and operations positions and/or employees require licenses, and testimony by Dr. Joseph Davis, assistant general director for research administration, regarding which of McLean's research labs are stand-alone labs and which are part of a larger program. After reviewing the record, I concur with the hearing officer's rulings that the above-described testimony would have been cumulative.